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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHAN PAUL MARIE GERARD LINNARTZ,
ROBERT LESLIE VAN OOSTENBRUGGE,
GERARDUS CORNELIS PETRUS LOKHOFF,
JAKOBUS MIDDELJANS, and PAULUS GEORGE MARIA DE BOT

Appeal 2007-3071
Application 10/082,856
Technology Center 3600

Decided: August 12, 2008

Before LINDA E. HORNER, ANTON W. FETTING, and DAVID B. WALKER,
Administrative Patent Judges.

WALKER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-10. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

Appellants claim a method of enabling disintermediation in a business model and a receiver for use therewith. (Specification 1:2-4). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of enabling disintermediation in a business model, said method comprising the steps of:
 - electronically embedding extra information related to the business model in content;
 - distributing the content with the embedded information via a third party to a rendering device;
 - electronically rendering the content with the embedded information thereby forming an output signal;
 - receiving the output signal;
 - electronically extracting the embedded information from the received output signal; and
 - processing the extracted embedded information in the course of the business model.

THE REJECTION

The Examiner relies upon the following as evidence in support of the rejection:

Stefik

US 2001/0008557 A1

Jul. 19, 2001

Claims 1-10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Stefik in view of Appellants' own admissions.

ISSUE

The issue before us is whether the Examiner erred in rejecting claims 1-10 as obvious over Stefik in view of Appellants' own admissions. The dispositive issue is whether the cited references teach "receiving the output signal," "electronically extracting the embedded information from the received output signal," and "processing the extracted embedded information in the course of the business model."

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

FINDINGS OF FACT

We find the following enumerated findings to be supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Stefik teaches a trusted rendering system that facilitates the protection of rendered digital works which have been rendered on a system that controls the distribution and use of digital works through the use of

- dynamically generated watermark information that is embedded in the rendered output. (Stefik, abstract).
2. Stefik shows transmitting the decrypted digital work with the watermark to a printer device for printing (step 508), which implies that the printer will receive the output signal (Stefik, [0066]-[0069] and Figure 5).
 3. Stefik also shows extracting embedded data and decoding it into a human readable form (Stefik, Figure 13).

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also* *KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d

1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

ANALYSIS

The Appellants argue claims 1-9 as a group. We treat claim 1 as representative.

The Examiner found that Appellants disclose that watermarks are a well known technique, and then go on to describe uses of the technique to include an audio based signal from a mobile phone (Answer 3, citing Specification, paragraphs 0008 to 0011). The Examiner treated all of this disclosure as Appellants' own admissions (Answer 3-4). The Appellants concede, in paragraph [0008], the existence of watermarks and their use in marking or protecting input signals, but argue that paragraphs [0009] and [0010] present new uses of watermarks that are the subject matter of the subject invention, which are more particularly described in paragraphs [0011] – [0014] (Br. 14). We need not consider the scope of admissions contained in the Specification, because Appellants do not dispute in this appeal any of the claim limitations for which the Examiner relies solely on the Appellants' alleged admissions in the Specification.

Appellants instead argue that the combination of Stefik and Appellants' admission of the existence of watermarking, does not disclose or suggest

“receiving the output signal,” the output signal being the rendered content (the digital work) with the embedded information (the watermark), “electronically extracting the embedded information from the received output signal” and “processing the extracted embedded information in the course of the business model.” (Br. 16).

The Examiner found that Stefik discloses the limitations of claims 1-10, with the exception of a specific reference to a mobile phone. The Examiner interpreted the extra information to be the watermark data, the content to be the digital file, rendering to be accomplished by printing or playing the digital file, extraction to be accomplished by reading the watermark and determining usage rights, and the business model to be the usage rights paid for that are reflected by the watermark in the digital content (Answer 4).

We agree with the Examiner that all of the disputed limitations of claim 1 are taught by Stefik. Stefik shows transmitting the decrypted digital work with the watermark to a printer device for printing, which implies that the printer will receive the output signal (Finding of Fact 2). Stefik also shows extracting embedding data and decoding it into a human readable form (Finding of Fact 3), which satisfies both the “electronically extracting the embedded information from the received output signal” and “processing the extracted embedded information in the course of the business model” limitations disputed by the Appellants. The Appellants therefore have not shown error in the Examiner’s rejection of claim 1. Claims 2-9 are not argued separately and, thus fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

Although the Appeal Brief purports to present separate arguments for claim 10 under a separate sub-heading (Br. 16-17), this portion of the Appeal Brief merely points out the limitations of claim 10, and baldly argues that none of the applied references teaches or suggests the features of this claim, without specifically pointing out the deficiencies in the Examiner's articulated position (Answer 3-5) with regard to the limitations of this claim. "A statement which merely points out what a claim recites will not be considered an argument for the separate patentability of the claims." 37 C.F.R. § 41.37(c)(1)(vii). The Appellants thus have failed to show error in the Examiner's rejection of claim 10.

CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1-10 under 35 U.S.C. § 103(a) as unpatentable over Stefik in view of Appellants' own admissions.

DECISION

The decision of the Examiner to reject claims 1-10 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

vsh

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BRIARCLIFF MANOR NY 10510